

**THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)**

MEMORANDUM OF INCORPORATION

of

**OLD MUTUAL LIMITED
A PUBLIC COMPANY
REGISTRATION NUMBER: 2017/235138/06**

REGISTRATION DATE: 29 MAY 2017

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1. Interpretation

1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

1.1.1 "**Act**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;

1.1.2 "**Board**" or "**Directors**" means the board of directors from time to time of the Company;

1.1.3 "**Company**" means the company incorporated under the registration number recorded on the first page of this document;

1.1.4 "**CSD**" means the Central Securities Depository as defined in section 1 of the Financial Markets Act;

1.1.5 "**CSDP**" means a depository institution accepted by a CSD as a "participant" in terms of section 31 of the Financial Markets Act;

1.1.6 "**Dividend Access Arrangements**" has the meaning ascribed thereto in clause 1.1.7;

1.1.7 "**Dividend Access Trust**" means any of the trusts established for the receipt of amounts paid by way of dividend or other shareholder distribution to such trust by one or more Subsidiaries of the Company (and/or an Associated Company as defined in clause 38.4.1) for the purpose of making payments out of such dividends or shareholder distributions to specified Shareholders in the Company who are beneficiaries of such trust by virtue of such shareholding ("**Dividend Access Arrangements**");

1.1.8 "**Financial Markets Act**" means the Financial Markets Act, No 19 of 2012, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Financial Markets Act, its regulations and standards;

1.1.9 "**FSR Act**" means the Financial Sector Regulation Act, No. 9 of 2017, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such FSR Act, its regulations and standards;

- 1.1.10 "IFRS" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in the Republic from time to time by the Financial Reporting Standards Council established in terms of section 203;
- 1.1.11 "JSE" means the JSE Limited, registration number 2005/022939/06, a public company registered and incorporated in accordance with the laws of the Republic, which is licensed as an exchange under the Financial Markets Act;
- 1.1.12 "**Listings Requirements**" means the listings requirements of the JSE;
- 1.1.13 "**OMSA**" means Old Mutual Group Holdings (SA) Proprietary Limited, registration number 1998/012276/07, a private company registered and incorporated in accordance with the laws of the Republic;
- 1.1.14 "**Ordinary Shares**" means the authorised ordinary shares of no par value in the capital of the company, as contemplated in clause 8.1;
- 1.1.15 "**present at a meeting**" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;
- 1.1.16 "**Regulations**" means the regulations promulgated in terms of the Act from time to time;
- 1.1.17 "**Republic**" means the Republic of South Africa;
- 1.1.18 "**Rules**" means any rules made by a company from time to time as contemplated in sections 15(3) to (5);
- 1.1.19 "**Security/ies**" means any Shares, debentures, debenture stock, debenture bonds, loan stock, notes or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.20 "**Securities Register**" means the register contemplated in section 50(1);
- 1.1.21 "**Shares**" means the Ordinary Shares and any other shares in the capital of the Company, from to time;

- 1.1.22 "Shareholder" means, subject to section 57(1), the registered holder of a Share issued by the Company and who is entered as such in the certificated or uncertificated Securities Register, as the case may be; and
- 1.1.23 "Subsidiary" means a subsidiary as contemplated in section 3, whether incorporated in South Africa or elsewhere.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise:
- 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2.2 a reference to a section by number refers to the corresponding section of the Act at the date on which this Memorandum of Incorporation is filed, notwithstanding the renumbering of such section after the date on which the Company is incorporated or on which this Memorandum of Incorporation is filed;
- 1.2.3 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.4 an expression which denotes:
- 1.2.4.1 any gender includes the other genders;
- 1.2.4.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.5 the singular includes the plural and *vice versa*.
- 1.3 Any reference in this Memorandum of Incorporation to:
- 1.3.1 "days" means calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.3.2 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, standard, regulatory instrument, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time; and

- 1.3.3 "writing" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Unless otherwise provided, defined terms appearing in this Memorandum of Incorporation in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with the meaning defined in the Act, failing which, in the latter case, their plain English meaning.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Each provision and each sentence and each part of a sentence in this Memorandum of Incorporation is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Act and/or the Listings Requirements, or void, such provision or sentence or part thereof may to that extent only be modified or severed from the Memorandum of Incorporation, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Act and/or the Listings Requirements or is not void.
- 1.9 If any provision of this Memorandum of Incorporation imposes any obligation or requirement pursuant only to the Listings Requirements, then:
- 1.9.1 unless the Company is a "listed company", as such term is defined in the Listings Requirements, any such provision shall be deemed not to apply to the Company; and

- 1.9.2 insofar as the JSE exempts or no longer requires compliance with such obligations or requirements, the obligations or requirements shall be deemed to have been complied with.
- 1.10 If any provision of this Memorandum of Incorporation limits, restricts or prohibits any power or authority of the Company or the Board pursuant only to the Listings Requirements, then insofar as such limitation, restriction or prohibition is waived, relaxed, repealed or amended by the JSE, the power or authority shall be deemed not to be subject to such limitation, restriction or prohibition to the extent of such waiver, relaxation, repeal or amendment without anything further being required.
- 1.11 To the extent that any provisions of this Memorandum of Incorporation are based on any unalterable provisions of the Act or the Regulations and any of these provisions are amended, the Directors are authorised to amend this Memorandum of Incorporation, subject to the approval thereof by the JSE, to reflect such amendments (which amendments will apply to the Company by operation of law).
- 1.12 If any provision of this Memorandum of Incorporation has been inserted to comply with a then applicable provision of the Listings Requirements, which is subsequently removed or modified, the provision in question shall no longer apply if the relevant provision has been removed or shall apply as modified in the Listings Requirements. The Directors are authorised to amend this Memorandum of Incorporation to reflect such amendments, subject to the approval thereof by the JSE.
- 1.13 Any reference in this Memorandum of Incorporation to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2. **Juristic Personality**

- 2.1 The Company is incorporated in accordance with and governed by:
- 2.1.1 the unalterable provisions of the Act, save to the extent that this Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement;
- 2.1.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
- 2.1.3 the other provisions of this Memorandum of Incorporation.

- 2.2 The Company may offer its Securities to the public and the transferability of the Securities of the Company is not restricted.

3. **Change of Name of the Company**

Any change of the name of the Company must be approved by a special resolution of the Shareholders and the proposed new name must comply with the requirements of the Act.

4. **Ratification of *Ultra Vires* Acts**

Save to the extent otherwise agreed with the JSE, it shall not be competent for any resolution to be proposed to the Shareholders for adoption in terms of sections 20(2) and/or 20(6) if such resolution would lead to the ratification of an act on behalf of the Company that is contrary to the Listings Requirements.

5. **Limitation of Liability**

No person shall, solely by reason of being an incorporator, Shareholder or Director of the Company, be liable for any liabilities or obligations of the Company.

6. **Powers of the Company**

- 6.1 The Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

- 6.2 To the extent that the Act or the Listings Requirements require a company to be expressly authorised by its Memorandum of Incorporation to do anything, the Company is, by this provision, conferred with the requisite authority to do so, subject to any express limitations set out in this Memorandum of Incorporation.

7. **Restrictive Conditions**

Save as expressly stated in this Memorandum of Incorporation, this Memorandum of Incorporation does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2)(b) or (c).

8. **Shares**

- 8.1 As at the date upon which this Memorandum of Incorporation is filed, the Company is authorised to issue the following number and classes of Shares (which include Shares already in issue at any time): 10 000 000 000 (ten billion) Ordinary Shares of

no par value, each of which rank *pari passu* in all respects, and 10 000 000 (ten million) Preference Shares, having the preferences, rights, limitations and other terms set out in Schedule 1 (Preference Share Terms).

8.2 Each of the Ordinary Shares of the Company entitles a Shareholder to the right to be entered into the Securities Register as the registered holder of that Ordinary Share and:

8.2.1 the right to vote on any matter to be decided by the holders of Ordinary Shares in the Company and to 1 (one) vote in the case of a vote by means of a poll;

8.2.2 the right, in person or by proxy, to attend, participate in, and speak at any meeting of the holders of Ordinary Shares in the Company;

8.2.3 subject to such preferences as may be accorded to the classes of Shares in the Share capital from time to time, the right to participate proportionally in any distribution made by the Company in respect of the Ordinary Shares;

8.2.4 subject to such preferences as may be accorded to the classes of Shares in the Share capital from time to time, the right to receive proportionally the total net assets of the Company remaining upon its liquidation; and

8.2.5 any other rights attaching to the Ordinary Shares in terms of the Act or any other law,

in each case in accordance with and subject to the further provisions of the Memorandum of Incorporation applicable to the Ordinary Share.

8.3 The Board may, subject to the FSR Act, the Listings Requirements and the further provisions of this clause 8.3, resolve to issue Shares of the Company at any time, but only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.

8.4 As regards the issue of Shares or Securities convertible into Shares, including options in respect thereof:

8.4.1 that require the approval of a special resolution as contemplated in sections 41(1) and (3) or as contemplated in the Listings Requirements, the Directors shall not have the power to allot or issue same without the prior approval of a special resolution of the Shareholders;

- 8.4.2 that require the approval of an ordinary resolution in terms of the Act or the Listings Requirements, the Directors shall not have the power to allot or issue same, without the prior approval of an ordinary resolution of the Shareholders;
- 8.4.3 other than as contemplated in clauses 8.4.1 and 8.4.2, the Directors shall have the power to allot or issue same, without any Shareholder approval, provided that the JSE has granted the requisite consent to the listing of such Securities and such issue is made subject to the Listings Requirements, where applicable.
- 8.5 The Board shall have the authority, as contemplated in section 47, to:
- 8.5.1 approve the issuing of any authorised Shares as capitalisation Shares on a *pro rata* basis to the Shareholders of one or more classes of Shares;
- 8.5.2 issue Shares of one class as capitalisation Shares in respect of Shares of another class; or
- 8.5.3 resolve to permit Shareholders to elect to receive a cash payment *in lieu* of a capitalisation Share, provided that the Board may not resolve to do so unless it:
- 8.5.3.1 has considered the solvency and liquidity test, as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and
- 8.5.3.2 is satisfied that the Company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.
- 8.6 Notwithstanding section 38, or anything contained in this Memorandum of Incorporation to the contrary, Shareholders in general meeting may by ordinary resolution authorise the Directors to issue unissued equity Securities and to grant options to subscribe for unissued equity Securities as the Directors in their discretion may deem fit, provided that such corporate actions have been approved by the JSE (if necessary) and comply with the Listings Requirements and the Act, however, Shareholder approval will not be required in terms of this clause 8.6 for such issue unless it is required in terms of the Listings Requirements or the Act.

- 8.7 In the event that the Company proposes to issue any equity Securities (or options over equity Securities) other than (it being understood that each of the issues set out in paragraphs 8.7.1 to 8.7.11 shall not require Shareholders' approval, or further Shareholder approval, as applicable):
- 8.7.1 Ordinary Shares issued in terms of options or conversion rights, provided that such options or conversion rights have been previously approved, to the extent necessary;
 - 8.7.2 Ordinary Shares issued in terms of a rights offer to be undertaken by the Company;
 - 8.7.3 Ordinary Shares to be held under an employee share scheme in terms of section 97, a share incentive scheme which complies with the provisions of Schedule 14 of the Listings Requirements or any other employee share option or incentive scheme, provided that such issue of Shares was previously approved, to the extent required;
 - 8.7.4 capitalisation Shares contemplated in section 47;
 - 8.7.5 Ordinary Shares issued pursuant to a scrip dividend, as contemplated by the Listings Requirements;
 - 8.7.6 Ordinary Shares issued for the acquisition of assets, as a vendor consideration placing directly or indirectly related to an acquisition of assets, or for the purposes of an amalgamation or merger;
 - 8.7.7 Ordinary Shares issued or to be issued as consideration for any assets, corporeal or incorporeal, or for services rendered;
 - 8.7.8 Ordinary Shares issued for cash pursuant to a general or specific approval given by the Shareholders in general meeting;
 - 8.7.9 the Share issue otherwise falls within a category in respect of which it is not, in terms of the Listings Requirements, a requirement for the relevant Shares to be so offered to existing Shareholders; or
 - 8.7.10 Ordinary Shares issued in accordance with an authority approved by ordinary Shareholders in general meeting; or
 - 8.7.11 any issue of Preference Shares

each Shareholder of the Company already holding issued equity Securities in the class of equity Securities (or options for equity Securities where an offer for options shall be *pro rata* in the same way as an offer for equity Securities) proposed to be issued has the right, before any other person who is not a Shareholder of the Company of that class of equity Securities (or options for equity Securities), to be offered, on such terms and in compliance with such procedures as the Board may determine, to subscribe for, that number of the equity Securities (or options for equity Securities) proposed to be issued which in relation to the total number of equity Securities (or options for equity Securities) proposed to be issued bears the (as close as possible) same ratio (as determined by the Board) as the number of equity Securities in that class already registered in the Shareholder's name at the time of such offer bears to the then total number of issued equity Securities (or options for equity Securities) in that class, calculated at the time the offer was made, provided that if any entitlement to a fraction of an equity Security pursuant to such an offer arises, all allocations of Securities will be calculated in accordance with the prevailing Listings Requirements. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the equity Security offered, the Directors may, subject to the foregoing provisions, issue such equity Security in such manner as they consider most beneficial to the Company. The Directors may exclude any Shareholders or category of Shareholders from an offer contemplated in this clause 8.7 if and to the extent that they consider it necessary or expedient to do so because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of South Africa, that may be applicable to the offer.

- 8.8 The provisions of clause 8.7 will apply *mutatis mutandis* to an issue of a class of authorised equity Securities (other than any Preference Shares, to which clause 8.7 does not apply) which have not been issued, based on the percentage voting rights which that Shareholder has in relation to the aggregate general voting rights, calculated at the time the offer was made.
- 8.9 At all times whilst the Company's Shares are listed on the JSE, the Company shall not issue any Shares in terms of sections 40(5) to 40(7).
- 8.10 The Company may pay to any person:
- 8.10.1 a commission for subscribing or agreeing to subscribe (whether absolutely or conditionally); or

- 8.10.2 a brokerage for procuring or agreeing to procure subscriptions (whether absolutely or conditionally),
- for any Securities issued or to be issued by the Company, provided that, for so long as any Securities of the Company are listed on the JSE, any such commission or brokerage shall not exceed 10% (ten percent) of the consideration payable for such subscription.
- 8.11 Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.
- 8.12 Such commission may be paid in cash or, if authorised by the Company in general meeting, by the allotment of fully or partly paid-up Shares, or partly in one way and partly in the other.
- 8.13 The Shareholders shall have the sole authority to undertake the following actions by a special resolution amending this Memorandum of Incorporation, namely to:
- 8.13.1 increase or decrease the number of authorised but unissued Shares of any class;
- 8.13.2 create any new class or classes of authorised Shares;
- 8.13.3 determine the preferences, rights, limitations or other terms of any Shares;
- 8.13.4 consolidate or subdivide (or both) any:
- 8.13.4.1 authorised but unissued Shares of any class; and
- 8.13.4.2 issued Shares of any class;
- 8.13.5 convert any par value Shares into Shares not having a par value, provided that the Shareholders holding 75% (seventy five percent) of the voting rights attaching to the issued Shares so consolidated or subdivided (prior to such consolidation or subdivision), approve that action by resolution and provided further that no par value Shares may be subdivided;
- 8.13.6 reclassify any Shares that have been authorised but not issued;
- 8.13.7 classify any unclassified Shares that have been authorised but are not issued;
- 8.13.8 determine the preferences, rights, limitations and other terms of any Shares that have been authorised but not issued;

- 8.13.9 vary the preferences, rights, limitations and other terms of any issued or unissued Shares;
 - 8.13.10 change the name of the Company;
 - 8.13.11 convert any class of Shares into Shares of another class; and
 - 8.13.12 convert any par value Shares to no par value Shares.
- 8.14 If the Shareholders act pursuant to the authority contemplated in clause 8.13, the Company must file a notice of amendment of this Memorandum of Incorporation in accordance with section 16(7).

9. **Rights offer (exclusion of non-residents)**

- 9.1 The Company may apply to the Companies and Intellectual Property Commission to exclude from any rights offer any category of holders of the Company's Securities who are not resident within South Africa, in terms of section 99(7).
- 9.2 Notwithstanding clause 9.1, any *pro rata* offer of any Securities to any person shall be subject to the possible exclusion of any persons who are prohibited by any law of any country to whose jurisdiction they are subject, from participation in that offer.

10. **Certificates Evidencing Securities**

- 10.1 Shares or other Securities which are of a class listed on the JSE shall, subject to the Listings Requirements and clause 11 below, be issued in the form of "uncertificated" Shares or Securities; provided that the Directors shall, subject to applicable law be entitled to resolve that Shares or other Securities be issued in certificated form.
- 10.2 In respect of existing Securities issued in certificated form, a certificate evidencing any Securities of the Company must comply with the formalities and content prescribed by section 51 and may otherwise be in such form as the Board prescribes from time to time.
- 10.3 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "**Duplicate Certificate**" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may determine.
- 10.4 A certificate registered in the names of two or more persons shall be delivered to the person first-named in the Securities Register as a holder thereof, and delivery of a

certificate to that person shall be a sufficient delivery to all joint holders of that Security.

11. Uncertificated Securities

11.1 In terms of section 52(4), the CSDP or CSD, and not the Company, must provide a regular statement to each person for whom any uncertificated Securities are held in the uncertificated Securities Register of the Company. The Company shall not issue certificates or statements evidencing or purporting to evidence title to uncertificated Securities of the Company.

11.2 A person who is entitled to and wishes to inspect the uncertificated Securities Register may do so only through the Company and in accordance with the rules of the CSD in terms of section 52(2) read with section 26.

12. Corporate Actions Required to Comply with the Listings Requirements

Notwithstanding anything to the contrary in this Memorandum of Incorporation, the Company shall, for so long as the Company's Shares are listed on the JSE, ensure that all of the Company's corporate actions comply with the Listings Requirements to the extent applicable. In particular, the Company shall ensure that when it undertakes the following corporate actions, such actions are done in compliance with the Listings Requirements:

12.1 the issue of Shares for cash and options and convertible Securities granted/issued for cash;

12.2 the repurchase of Securities by the Company; and

12.3 the alteration of the Company's share capital, authorised Shares and rights attaching to a class/es of Shares.

13. Transfer of Certificated and Uncertificated Securities

13.1 Transfer of certificated Securities

13.1.1 The instrument of transfer of any certificated Security shall be signed by the transferor and the transferor shall be deemed to remain the Shareholder of such certificated Security until the name of the transferee is entered in the Securities Register.

13.1.2 Subject to such restrictions as may be applicable (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), and particularly to the provisions of this clause 13 and clause 14,

any Shareholder or holder of certificated Securities may transfer all or any of its certificated Securities by instrument in writing in any usual or common form or any other form which the Directors may approve.

13.1.3 Every instrument of transfer shall be delivered to the appointed transfer secretaries of the Company, accompanied by:

13.1.3.1 the certificate issued in respect of the certificated Securities to be transferred; and/or

13.1.3.2 such other evidence as the Company may require to prove the title of the transferor, or its right to transfer the certificated Securities,

and the Directors may decline to recognise any instrument of transfer unless it is accompanied by the certificate of the certificated Securities to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and unless the Securities transfer tax thereon has been paid.

13.1.4 All authorities to sign transfer deeds granted by the Shareholders for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company or its registered office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice. The Company shall not be bound to allow the exercise of any act or matter by an agent for a Shareholder unless a duly certified copy of such agent's authority be produced and filed with the Company.

13.1.5 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide. Any instrument of transfer which the Directors may decline to register shall (unless the Directors shall resolve otherwise) be returned on demand to the person who lodged it.

13.2 **Transfer of uncertificated Securities**

A transfer of uncertificated Securities of the Company shall be effected in terms of section 53 read with the rules of the relevant CSD.

13.3 **Securities transfer tax**

Securities transfer tax payable in respect of any transfer of listed Securities pursuant to this Memorandum of Incorporation will be paid by the relevant CSD as a participant in that CSD, but will be recoverable from (i) the person to whom that listed Security is transferred; or (ii) the Company, where the listed Security is cancelled or redeemed. Securities transfer tax payable in respect of any transfer of unlisted Securities pursuant to this Memorandum of Incorporation will be paid by the Company to the extent that the Company is liable therefor in law, but shall, to that extent, be recoverable from the person acquiring such unlisted Securities.

14. **Transmission of Securities**

14.1 The executor of the estate of a deceased sole Shareholder of a Security shall be the only person recognised by the Company as having any title to the Security. In the case of a Security registered in the names of 2 (two) or more Shareholders, the survivor or survivors, or the executor of any deceased Shareholder shall be the only person recognised by the Company as having any title to the Security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased Shareholder, or of a Shareholder whose estate has been sequestrated or of a Shareholder who is otherwise under a disability or as the liquidator of any body corporate which is a Shareholder, shall be entered in the Securities Register of the Company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Shareholder of the Company.

14.2 Subject to the provisions of clause 14.1, any person becoming entitled to any Security by virtue of the death of a Shareholder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Shareholder could have made; provided that, in respect of a transfer other than to himself:

14.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Shareholder before his death; and

14.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Shareholder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company.

14.3 A person to whom Securities have been issued or transferred shall, in order for that person's name to be entered in the Company's Securities Register or the records to be administered and maintained by a CSDP or CSD as the Company's uncertificated Securities Register in terms of section 50(3), provide to the Company, CSDP or CSD, as the case may be, all the information relating to that person which is required to be included in the Securities Register, including the uncertificated Securities Register, in terms of the Act, the Regulations, the Listings Requirements or in terms of this Memorandum of Incorporation.

15. **Debt Instruments**

15.1 The Board may authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2).

15.2 Debt instruments shall not be issued with special privileges, including attending and voting at general meetings and the appointment of Directors.

16. **Beneficial Interests in Securities**

Subject to the provisions of the FSR Act, the Company's issued Securities may be held by, and registered in the name of, one person for the beneficial interest of another person as set out in section 56(1).

17. **No Liens**

Securities in the Company shall not be subject to any lien in favour of the Company.

18. **Odd-lot Offers**

18.1 For purposes hereof:

18.1.1 "**Odd-lot**" means any total holding by a Shareholder (which for the purposes of this clause 18 shall include a dematerialised Shareholder without "own-name registration" that holds the Shares through a nominee in accordance with the rules and procedures of Strate Proprietary Limited) of less than 100 Shares (or such other number as may be permitted by the JSE), or any total holding by a Securities holder of less than 100 Securities (or such other number as may be

permitted by the JSE) or a minimum number of Securities with an aggregate nominal value of less than R100.00 (or such other rand amount as may be permitted by the JSE);

18.1.2 "Odd-lot Offer" means an offer by the Company, or its nominee (which for the avoidance of doubt shall include any of the Company's Subsidiaries from time to time), to the holders of Odd-lots in terms of which the holders of the Odd-lots may elect to retain their holdings or sell their Odd-lots, subject to the Listings Requirements to the extent applicable.

18.2 The Company, or its nominee may make and implement Odd-lot Offers on such terms and conditions as the Board may determine, in accordance with and subject to the Listings Requirements (which shall for the avoidance of doubt include any Shareholder approval required in terms of the Listings Requirements, it being recorded that it will be competent for the Company to procure any Shareholder approval required for an Odd-lot Offer by written resolution of Shareholders as envisaged in 28.1) or as otherwise permitted by the JSE; and if it does so and any Shareholder or Securities holder who qualifies to participate in that Odd-lot Offer does not elect any of the election alternatives (namely to retain their Odd-lots or to sell their Odd-lots) in accordance with the terms of the Odd-lot Offer, such holder (and any person with a beneficial interest in such Odd-lots) shall be deemed to have agreed to sell the Odd-lots, and the Company, or its nominee shall be entitled (on implementation of the Odd-lot Offer) to cause the Odd-lots to be sold on behalf of such persons to any party (including the Company) on such terms and conditions as the Board may determine; provided that the Company shall account to the registered holders, after deducting the costs of the sales, if any, for the remaining proceeds attributable to them pursuant to the sale of such Odd-lots.

18.3 All unclaimed proceeds of Odd-lot sales shall be held by the Company in trust for the benefit of the Shareholders, subject to clause 38.2.11 and to the laws of prescription.

19. **Financial Assistance**

The Board may authorise the Company to provide financial assistance in accordance with the provisions of sections 44 and 45, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

20. The Company or a Subsidiary Acquiring the Company's Shares

20.1 The Board may, with the approval of a special resolution of the Company's ordinary Shareholders, determine that:

20.1.1 the Company will acquire a number of its own Shares; or

20.1.2 a Subsidiary of the Company will acquire a number of Shares in the Company, subject to the provisions of section 48 and the Listings Requirements; provided that a *pro rata* repurchase by the Company of its Shares from all Shareholders will not require Shareholder approval other than in circumstances contemplated in clause 20.2.

20.2 A decision by the Board contemplated in clause 20.1:

20.2.1 must be approved by a special resolution of the Shareholders if any Shares are to be acquired by the Company from a Director or Prescribed Officer of the Company; and

20.2.2 is subject to the requirements of sections 114 and 115 if, considered alone or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% (five percent) of the issued Shares of any particular class of the Company's Shares.

21. Single Shareholder's Authority to Act

Subject to the provisions of the Act and the Listings Requirements, if, at any time, as contemplated in section 57(2), the Company has only 1 (one) Shareholder:

21.1 that Shareholder may exercise any and all of the voting rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities as set out in that section, and such power is not limited or restricted by this Memorandum of Incorporation; and

21.2 the provisions of clauses 22 (*Shareholders' Meetings*), 24 (*Shareholders' Meetings by Electronic Communication*), 25 (*Votes of Shareholders*), 27 (*Shareholders' Resolutions*) and 28 (*Shareholders Acting Other Than at a Meeting*) shall not apply to the Company.

22. Shareholders' Meetings

22.1 Requirement to hold Shareholders' meetings

- 22.1.1 The Board, or any prescribed officer or Shareholder of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.
- 22.1.2 Notwithstanding any provision of the Act to the contrary, and in addition to other meetings of Shareholders that may be convened from time to time, the Company shall convene annual general meetings of its Shareholders from time to time in accordance with the provisions of the Act and the Listings Requirements.
- 22.1.3 Save as otherwise provided herein, the Company is not required to hold any Shareholders' meetings other than those specifically required by the Act and/or the Listings Requirements.

22.2 Location of Shareholders' meetings

- 22.2.1 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 22.2.2 Subject to the Act and the Listings Requirements, the Directors may, in their discretion, make arrangements for simultaneous attendance of and participation in a Shareholders' meeting at more than one venue, and the respective venues and arrangements for simultaneous attendance shall be specified in the notice of the Shareholders' meeting. The venue where the chairperson of the meeting shall preside shall be the "**Principal Venue**".
- 22.2.3 The arrangements contemplated in clause 22.2.2 may:
- 22.2.3.1 include limits on the level of attendance at the Principal Venue or other venues, provided that Shareholders excluded from attendance at the Principal Venue must be able to attend the meeting at least one of the other venues;
- 22.2.3.2 include such arrangements as the Directors, in their discretion, consider appropriate for organising attendance at the respective venues, including the issue of tickets (on a basis intended to afford all

Shareholders entitled to attend the meeting an equal opportunity to be admitted to the Principal Venue) or the imposition of any other mechanisms for selecting Shareholders for admission to the Principal Venue; and

22.2.3.3 may be varied by the Directors from time to time and the entitlement of any Shareholder to attend a meeting at the Principal Venue shall be subject to the arrangements in force at the time, as stated in the notice of the Shareholders' meeting.

22.2.4 For purposes of this Memorandum of Incorporation, any meetings simultaneously held at the other venues shall be treated as being held and taking place at the Principal Venue.

22.3 **Notice of Shareholders' meetings**

22.3.1 A notice of a Shareholders' meeting must be delivered:

22.3.1.1 to each of the Shareholders as of the applicable record date for delivery of that notice and entitled to vote at such meeting;

22.3.1.2 to the auditors for the time being of the Company in terms of section 93(1)(c)(ii); and

22.3.1.3 if expressly required in terms of an instrument appointing a proxy which has been delivered to the Company, to the proxy or proxies of a Shareholder,

in such form and content as prescribed in section 62(3), at least 15 business days before the date on which the meeting is to begin in the case of both ordinary resolutions and special resolutions unless, in terms of section 62(2A), the meeting is called on a shorter period of notice.

22.3.2 The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders who, either alone or together, hold 5% (five percent) or less of the Shares in the Company shall not invalidate any resolution passed at any such meeting.

22.4 **Quorum for Shareholders' meetings**

22.4.1 A Shareholders' meeting may not begin until:

- 22.4.1.1 if the Company has more than two Shareholders, at least three Shareholders are present at the meeting; and
- 22.4.1.2 sufficient Shareholders are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting.
- 22.4.2 A matter to be decided at the Shareholders' meeting may not begin to be considered unless:
- 22.4.2.1 if the Company has more than two Shareholders, at least three Shareholders are present at the meeting; and
- 22.4.2.2 sufficient Shareholders are present at the meeting to exercise, in aggregate at least 25% (twenty five percent) of all the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- 22.5 **Adjournment of Shareholders' meetings**
- 22.5.1 The time periods allowed in section 64(4) and (5) apply to the Company.
- 22.5.2 There shall be no limitation on the period for which a Shareholders' meeting may be adjourned.
- 22.6 **Chairperson**
- 22.6.1 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 22.6.2 If there is no such chairperson, or if at any meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.
- 22.6.3 The chairperson of a Shareholders' meeting may:

22.6.3.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;

22.6.3.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes (whether by a show of hands or on a poll).

22.7 **Objections or errors in voting**

22.7.1 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless:

22.7.1.1 it is brought to the attention of the chairperson at the meeting; and

22.7.1.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.

22.7.2 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised:

22.7.2.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

22.7.2.2 at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

22.8 **Attendance by Directors**

Even if he is not a Shareholder, any Director may attend and speak at any general meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder.

22.9 **Security Arrangements**

The Directors can, in their discretion, put in place security arrangements that they consider appropriate for the proper and orderly conduct of a Shareholders' meeting and the safety of the people attending it.

22.10 **Orderly conduct of Shareholders' meetings**

The chairperson of a Shareholders' meeting can take any action he or she considers appropriate for the proper and orderly conduct of the business to be carried out at the meeting. The chairperson's decision on points of order, matters of procedure or matters that arise incidentally from the business of the meeting (including whether or not a matter falls in these categories) shall be final.

23. **Record Date for Determining Shareholder Rights**

Notwithstanding anything contained in this Memorandum of Incorporation to the contrary, while any of the Shares of the Company are listed on the JSE, the record date for the purposes of determining Shareholder rights shall be determined in accordance with the Listings Requirements.

24. **Shareholders' Meetings by Electronic Communication**

The Company may conduct a Shareholders' meeting entirely by electronic communication or provide for participation in a meeting by electronic communication, as set out in section 63, and the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation.

25. **Votes of Shareholders**

25.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company:

25.1.1 every person present and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and

25.1.2 on a poll, any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that Shareholder.

25.2 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for such a vote:

25.2.1 by Shareholders in accordance with the provisions of the Act; or

25.2.2 by the chairperson of the meeting.

- 25.3 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 25.2, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 25.4 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.
- 25.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 25.6 A poll demanded on the election of a chairperson (as contemplated in clause 22.6.2) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 25.7 Where there are joint registered Shareholders, any 1 (one) of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he were solely entitled thereto. If more than 1 (one) of such joint holders are present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.
- 25.8 The board of any company or the controlling body of any other entity or Shareholder may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply:
- 25.8.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were a Shareholder; and

25.8.2 the authorising company, entity or person shall lodge a resolution (or other written delegation of authority) of the board or controlling body of such company, entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairman of such meeting.

26. Proxies and Representatives

26.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy in accordance with and for the purposes set out in the Act.

26.2 The holder of a power of attorney or other written authority from a Shareholder may, if so authorised thereby, represent such Shareholder at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Shareholder at a Shareholders' meeting.

26.3 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply provided that:

26.3.1 a Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy before the proxy exercises that Shareholder's rights; and

26.3.2 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7), and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

26.4 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time:

"I/We _____

of (address) _____

Telephone number _____ Cell phone number _____

E-mail address _____

being the registered holder(s) of: _____ [Certificated Shares or]Dematerialised Shares with "own name" registration do hereby appoint:

1. _____ or failing him/her
2. _____ or failing him/her
3. the chairperson of the annual general meeting,

as my/our proxy to vote for me/us on my/our behalf at the annual general meeting which will be held for the purpose of considering and, if deemed fit, adopting with or without modification, the resolutions to be proposed thereat and at each adjournment thereof and to vote for and/or against the said resolutions and/or to abstain from voting in respect of the shares registered in my/our name(s), in accordance with the following instructions (see notes):

	For	Against	Abstain
Ordinary Resolution 1			
Special Resolution 1			

Insert an "X" in the relevant spaces above according to how you wish your votes to be cast. However, if you wish to cast your votes in respect of a lesser number of shares than you own in the Company, insert the number of shares, which you desire to vote (see note 3).

This proxy shall be valid only for the annual general meeting of shareholders of the Company to be held on [day], [date] 20[•] and any adjournment thereof.

Signed at _____ on _____ 20[•]

Signature _____

Assisted by me (where applicable) (state capacity and full name) _____"

26.5 A vote cast or act done in accordance with the terms of a proxy form shall be deemed to be valid notwithstanding:

26.5.1 the previous death, insanity, or any other legal disability of the person appointing the proxy; or

26.5.2 the revocation of the proxy; or

26.5.3 the transfer of a Share in respect of which the proxy was given,

unless notice as to any of the abovementioned matters shall have been received by the Company or the chairperson of the meeting before the vote was cast or the act was done or before the poll was taken.

27. Shareholders' Resolutions

- 27.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Shareholders exercised on the resolution.
- 27.2 For a special resolution to be approved it must be supported by at least 75% (seventy five percent) of the voting rights of Shareholders exercised on the resolution by Shareholders present at a meeting of Shareholders.
- 27.3 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

28. Shareholders Acting other than at a Meeting

- 28.1 In accordance with the provisions of section 60, subject to clause 28.3, a resolution that could be voted on at a Shareholders' meeting may instead be:
- 28.1.1 submitted by the Board to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
- 28.1.2 voted on in writing by such Shareholders within a period of 20 (twenty) days after the resolution was submitted to them.
- 28.2 A resolution contemplated in clause 28.1:
- 28.2.1 will have been adopted if and when it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary resolution or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
- 28.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 28.3 Subject to clause 28.4, all Shareholders' meetings that are called for in terms of the Listings Requirements must be convened by the Board (and such Shareholders' meetings shall be held in person and may not be held by means of a written resolution as is contemplated in section 60, save to the extent permitted by the

Listings Requirements) for purposes of the Shareholders considering and, if deemed fit, approving the Shareholders' resolutions required to be passed by the Shareholders in terms of the Listings Requirements.

28.4 There is no prohibition or restriction in this Memorandum of Incorporation on the Company calling any meeting for the purposes of adhering to the Listings Requirements.

29. **Composition and Powers of the Board of Directors**

29.1 The Board shall comprise not less than such minimum number of Directors as is required by the Act, the Listings Requirements and the FSR Act.

29.2 Subject to section 66(4)(b) and clause 29.5, the Company's ordinary Shareholders shall be entitled at a general meeting of the Company to elect all of the Directors of the Company (and their alternates) for the time being and from time to time, by a separate ordinary resolution with respect to each such Director and each alternate; provided that (i) if the ordinary Shareholders do not elect an alternate with respect to any Director, the Board shall be entitled to appoint such alternate(s) and (ii) such alternate is not a person previously proposed to the ordinary Shareholders as an alternate or as a Director but who was not elected by the ordinary Shareholders when put to the vote.

29.3 A Director shall not be required to hold any Shares in the Company.

29.4 The Company's ordinary Shareholders shall have the right to nominate persons for appointment as Directors; provided that such right shall not include the right to appoint or remove any Director/s, and the appointment of all Directors shall be subject to ordinary Shareholder approval, as contemplated by the Listings Requirements.

29.5 Subject to section 66(4)(b), the Board has the power to appoint Directors (i) to fill a casual vacancy (being a vacancy on the Board which does not amount to the number of Directors being less than the minimum number of Directors prescribed in terms of this Memorandum of Incorporation) or (ii) as an addition to the Board (as contemplated in section 66(4)(a)(i)); provided that, such appointment must be confirmed by the Shareholders at the next annual general meeting of the Company (in accordance with clause 29.2).

29.6 Apart from satisfying the qualification and eligibility requirements set out in section 69 and the FSR Act, a person need not satisfy any further eligibility

requirements or qualifications to become or remain a Director or a prescribed officer of the Company.

29.7 The elected Directors shall rotate in accordance with the provisions of this clause 29.7:

29.7.1 at the first annual general meeting of the Company, all the elected Directors shall retire from office, and at each subsequent annual general meeting (or other general meeting held on an annual basis), one third of the non-executive Directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to one third, but not less than one third, shall retire from office; provided that the meeting is not conducted in terms of section 60. If an elected Director is appointed as chief executive officer, financial Director or as an employee of the Company in any other capacity, the contract under which he is appointed may provide that he shall not, while he continues to hold that position or office, be subject to retirement by rotation and he shall not, in such case, be taken into account in determining the rotation or retirement of Directors;

29.7.2 the elected Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot. Life directorships and directorships for an indefinite period shall not be permitted;

29.7.3 a retiring Director shall act as a Director throughout the meeting at which he or she retires and may be re-elected, provided that such Director is eligible;

29.7.4 the Company, at the general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto;

29.7.5 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clause 22.5, will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

- 29.8 The Directors may at any time and from time to time appoint any person or persons to act on behalf of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Directors may from time to time think fit and may from time to time vary or revoke any such appointment. Any such appointment may, if the Directors think fit, be made in favour of any company, the members, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 29.9 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 29.10 The remaining Directors in office may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the minimum number fixed in accordance with this Memorandum of Incorporation, they must as soon as possible and within 3 (three) months from the date that the number of Directors fell below the minimum, fill the vacancies or call a general meeting for that purpose. The failure by the Company to have the minimum number of Directors during the 3 (three) month period does not limit or negate the authority of the Board or invalidate anything done by the Board or the Company. After the expiry of the 3 (three) month period the remaining Directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of Shareholders.
- 29.11 A Director may also hold any other office in the Company other than that of auditor, and may also hold office as director or manager of, or in any other capacity, in any other company in which the Company is a shareholder or is otherwise interested, and shall not be liable to account to the Company for any remuneration or other benefits receivable by him from such other company. The appointment of a Director in any other capacity in the Company and his remuneration must be determined by a disinterested quorum of Directors.

30. Directors' Meetings

- 30.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 30.2 The Directors may elect a chairperson and a deputy chairperson or lead independent Director and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson or lead independent Director, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson or lead independent Director is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be chairman of such meeting.
- 30.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 30.4 The quorum requirement for a Directors' meeting (including an adjourned meeting) shall be a majority of the total number of Directors, of whom the majority must be independent non-executive Directors.
- 30.5 Each Director has 1 (one) vote on a matter before the Board.
- 30.6 A majority of the votes cast on a resolution is sufficient to approve that resolution and, in the case of a tied vote, the chairperson shall not have a casting vote and the matter being voted on fails.
- 30.7 A resolution that could be voted on at a Board meeting (other than a Board resolution resolving that the Company voluntarily begin business rescue proceedings and place the Company under supervision as contemplated in section 129(1)) may instead of being voted on at a Board meeting be:
- 30.7.1 submitted (by the Directors proposing the resolution) for consideration to each Director; and
- 30.7.2 voted on in writing by Directors entitled to exercise voting rights on that matter.
- 30.8 A resolution contemplated in clause 30.7 will have been adopted as a Board resolution if it has been supported in writing by the requisite majority (as determined in terms of clause 30.6) of the Directors in person who are entitled to exercise voting

rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a Board meeting.

- 30.9 A round-robin resolution of Directors shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution (provided that effective date is not a date earlier than the date on which the resolution was submitted to Directors for their consideration and, if deemed fit, adoption) or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last Director whose vote is required to reach the requisite majority as contemplated in clause 30.8.
- 30.10 In accordance with section 73(3), the Board may conduct a meeting entirely by electronic communication or provide for participation in a meeting by one or more Directors by electronic communication, provided that the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

31. **Directors' Compensation**

- 31.1 Any Director who:
- 31.1.1 serves on any executive or other committee; or
 - 31.1.2 devotes special attention to the business of the Company; or
 - 31.1.3 goes or resides outside the Republic for the purpose of the Company; or
 - 31.1.4 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,
- may, to the extent that any such payment does not constitute remuneration for his or her services as a Director as contemplated in section 66(8) or (9), be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine.
- 31.2 The Directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with:
- 31.2.1 the business of the Company; and

- 31.2.2 attending meetings of the Directors or of committees of the Directors of the Company.

32. Executive Directors

- 32.1 The Board may from time to time appoint one of their number as a chief executive officer, financial Director, or to any other executive office of the Company, for such term as they may think fit, and may revoke such appointment, subject to the terms of any agreement entered into in any particular case.
- 32.2 Subject to the provisions of any contract between such executive officer and the Company, the executive officer shall be a Director and shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 32.3 The Directors may from time to time entrust to and confer upon the chief executive officer appointed in terms of clause 32.1 such powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that respect, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

33. Indemnification of Directors

- 33.1 The Company shall be entitled to:
- 33.1.1 advance expenses to a Director and/or directly or indirectly indemnify a Director in respect of the defence of legal proceedings to the extent contemplated in section 78(4);
- 33.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or
- 33.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7), and the powers of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.
- 33.2 The provisions of clause 33.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee.

34. **Borrowing Powers**

The Directors may from time to time exercise all of the powers of the Company to:

- 34.1 borrow for the purposes of the Company such sums as they think fit; and
- 34.2 secure the payment or repayment of any such sums, or any other sum, as they think fit, whether by the creation and issue of any Securities, mortgage or charge upon all or any of the property or assets of the Company.

35. **Committees of the Board**

35.1 **General**

35.1.1 The Board may:

35.1.1.1 appoint committees of Directors, including statutory committees and *ad hoc* committees, and delegate to any such committee any of the authority of the Board as set out in section 72(1); and

35.1.1.2 include in any such committee persons who are not Directors, but no such person shall have a vote on a matter to be decided by the committee, and the Board and committee may consult with and be advised by such persons.

35.1.2 Committees appointed by the Board in compliance with the Act and/or the Listings Requirements shall comprise at least three members and all *ad hoc* committees shall comprise the number of members determined by the Board from time to time.

35.1.3 The meetings and proceedings of any Board and statutory committee shall, unless otherwise required by the Act, be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors, so far as the same are applicable thereto and, to the extent applicable, are not superseded by any regulations made by the Directors when appointing such committee and establishing its terms of reference.

35.2 **Committees**

35.2.1 The Company shall establish the requisite committees in accordance with the requirements of the Act, the Listings Requirements and any other applicable legislation.

- 35.2.2 Neither the appointment nor the duties of the audit committee of the Company reduce the functions and duties of the Board, except with respect to the appointment, fees and terms of engagement of the auditor.
- 35.2.3 The Company shall pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto, having regard to, amongst other financial constraints, the solvency and liquidity test as applied to the Company.
- 35.2.4 All committees and members of the committees will meet all requirements in terms of the Act, the Listings Requirements and/or other laws. In particular, without limitation, in respect of the Company's audit committee, at least one third of the members of the committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

36. Annual Financial Statements

- 36.1 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of:
- 36.1.1 the Act;
- 36.1.2 the FSR Act;
- 36.1.3 any other law with respect to the preparation of financial statements to which the Company may be subject;
- 36.1.4 the Regulations; and
- 36.1.5 this Memorandum of Incorporation.
- 36.2 The Company shall each year prepare and distribute annual financial statements in accordance with applicable law and regulations.
- 36.3 The annual financial statements of the Company shall be prepared and audited in accordance with the provisions of section 30 and the Listings Requirements.
- 36.4 The Company shall be entitled to:

- 36.4.1 include a summarised form of the annual financial statements of the Company for the preceding year in any relevant notice of an annual general meeting, along with directions for obtaining a copy of the complete annual financial statements;
- 36.4.2 make such copy of the complete annual financial statements available on the Company's website; and
- 36.4.3 send any notice of an annual general meeting, including any summarised form of the annual financial statements of the Company for the preceding year forming part of such notice, electronically directly to those entitled to receive same and that have provided an email address for the purposes of electronic communications as envisaged in clause 39.2.2,

provided that the annual financial statements, or a summarised form of the annual financial statements, must be distributed to the Shareholders by no less than 15 business days prior to the annual general meeting at which the annual financial statements will be presented.

37. **Company Secretary**

- 37.1 The Company must appoint a company secretary.
- 37.2 The company secretary must have the requisite knowledge of, or experience in respect of, relevant laws and be a permanent resident of the Republic.
- 37.3 The Board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.

38. **Distributions**

38.1 **General**

Subject to the provisions of the Act, and particularly section 46, and the FSR Act, the Board, or on the recommendation of the Board, the Company's ordinary Shareholders by ordinary resolution, may at any time make Distributions.

38.2 **Distributions to Shareholders**

- 38.2.1 This clause 38.2 shall apply to Distributions made to Shareholders on a class of Shares as envisaged in paragraph (a) of the definition of 'distributions' in the

Act, and references in this clause 38.2 to "Distributions" shall be read accordingly.

- 38.2.2 Subject to the further provisions of this Memorandum of Incorporation (including clause 38.4) and save as otherwise authorised by law or the regulations of a securities exchange on which the relevant Shares are listed, Distributions to Shareholders of a class shall be declared in proportion to the number of Shares of the relevant class held by such Shareholders.
- 38.2.3 Distributions shall be declared payable to the relevant Shareholders registered as such on the record date with respect to such Distribution, determined in terms of clause 23, provided that such record date in the case of the payment of any Distribution shall be a date subsequent to the date of sanctioning of the Distribution or declaring the Distribution by the Board, whichever is the later.
- 38.2.4 Distributions payable in cash shall be declared in the currency of the Republic of South Africa. The Board may, in its discretion and on such terms and conditions as it may determine, authorise the payment of any Distribution to a non-resident Shareholder in any foreign currency requested by the non-resident Shareholder, at the cost, expense and risk of the non-resident Shareholder in question.
- 38.2.5 In the case where several persons are registered as the joint holders of any Shares, any one of such persons may give to the Company effective receipts for all or any Distributions and payments on account of Distributions in respect of such Shares.
- 38.2.6 Subject to clause 38.2.9, all cash Distributions, interest or other sums payable in cash to Shareholders shall be paid by electronic funds transfer or other electronic means, or as otherwise specified by the Board from time to time. Payment by any means into the bank account recorded in the Company's bank account register nominated by the Shareholder, or in the case of joint Shareholders into the bank account nominated by the Shareholder whose name stands first in the Securities Register in respect of the Share, shall discharge the Company of any further liability in respect of the amount concerned.
- 38.2.7 Every payment of a Distribution, interest or other sums made by electronic funds transfer shall be made at the risk of the Shareholders or joint

Shareholders. The Company shall not be responsible for the loss or misdirection of any electronic funds transfer.

- 38.2.8 In respect of Distributions to Shareholders holding Securities listed on the JSE, payments to such Shareholders must be provided for in accordance with the Listings Requirements to the extent applicable and must not provide that capital shall be repaid on the basis that it may be called up again.
- 38.2.9 A Distribution may also be made and/or paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.
- 38.2.10 No Distribution shall bear interest against the Company, except as otherwise provided under the conditions of the issue of the Shares in respect of which such Distribution is payable.
- 38.2.11 Distributions unclaimed for a period of not less than 3 (three) years from the date on which such Distributions became payable by the Company may, at the discretion of the Board, be declared forfeit by the Board for the benefit of the Company. For the avoidance of doubt, all Distributions in the form of monies shall be held by the Company in trust for the benefit of the Shareholders, until lawfully claimed by the relevant Shareholders, but subject to the provisions of this clause 38.2.11 and the laws of prescription from time to time, or until the Company is wound up.
- 38.2.12 Subject only to the provisions of any law to the contrary, Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 38.2.13 The Directors may from time to time declare and pay to the Shareholders such interim Distributions as the Directors consider appropriate.
- 38.2.14 Without detracting from the ability of the Company to issue capitalisation shares, any Distribution may be effected and/or paid wholly or in part:
- 38.2.14.1 by the distribution of specific assets; or
- 38.2.14.2 by the issue of Shares, debentures or Securities of the Company or of any other company; or
- 38.2.14.3 in cash; or

38.2.14.4 in any other way which the Directors or Company in general meeting may at the time of declaring the Distribution determine, including granting to the Company's ordinary Shareholders a right of election between receiving any Distribution in cash or in the form of the distribution of specific assets.

38.2.15 Where any difficulty arises in regard to any Distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on Distribution.

38.2.16 The Directors may:

38.2.16.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of Distribution; and

38.2.16.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the Distribution as the Directors deem expedient.

38.3 **Other Distributions**

Distributions made by the Company as envisaged in paragraphs (b) and/or (c) of the definition of 'distributions' in the Act, and/or Distributions made to persons other than Shareholders, shall be effected in such manner and subject to such terms as the Directors or the Company in general meeting may at the time of declaring the Distribution determine.

38.4 **Dividend Access Trusts**

38.4.1 Notwithstanding any notional calculation of Distributions due to Shareholders in the Company from time to time and in accordance with this clause 38, where any amount paid by way of dividend or other shareholder distribution ("**Dividend**") by one or more Subsidiaries of the Company to any Dividend Access Trust (or to any company associated with that Dividend Access Trust ("**Associated Company**")) is received (i) by such Dividend Access Trust or (ii) by any Associated Company in connection with the Dividend Access Arrangements, no distribution by the Company shall be due to any Shareholder of the Company pursuant to any Distribution declared in terms of this Memorandum of Incorporation, to the extent that such Shareholder is entitled to receive any amount from the Dividend Access Trust (whether directly or indirectly via such Associated Company).

- 38.4.2 Where amounts are received by a Dividend Access Trust and/or Associated Company in one currency and a Distribution is declared and/or authorised as payable by the Company under clause 38.2.4 in another currency, the amounts so received by the Dividend Access Trust and/or Associated Company shall, for the purposes of calculating the reduction required by clause 38.4.1, be converted into the currency in which the Company has declared and/or authorised the Distribution at such rate as the Directors shall consider appropriate.
- 38.4.3 For the purposes of clause 38.4.1, the amount which any Shareholder is entitled to receive from the Dividend Access Trust shall, irrespective of the fact that such amounts are not actually received by the Shareholder, be deemed to include:
- 38.4.3.1 any amount which the Dividend Access Trust may be compelled by law to withhold from that Shareholder in respect of any matter;
- 38.4.3.2 a *pro rata* share of any taxation which the Subsidiary and/or Associated Company declaring and paying the same is obliged to withhold or to deduct from the amount of any Dividends declared and/or paid by it to the Dividend Access Trust;
- 38.4.3.3 any taxation which the Dividend Access Trust is obliged to withhold or to deduct from any amount accrued and/or paid to the Shareholder in question or for which the Dividend Access Trust is liable in respect of any Dividend accrued to it and/or which it receives from the Subsidiary and/or Associated Company;
- 38.4.3.4 a *pro rata* share of any taxation which the Subsidiary paying any Dividend to the Dividend Access Trust and/or Associated Company is obliged to pay in respect of that Dividend (being an amount paid in addition to the Dividend), provided in this case that the Shareholder concerned is able to obtain a credit for such taxation in calculating the tax liability in respect of the Distribution (and/or amounts received by or accrued to it from the Dividend Access Trust) in the jurisdiction in which the Dividend Access Trust is established;
- 38.4.3.5 a *pro rata* share of any amount which the Associated Company may be compelled by law to withhold from the Dividend Access Trust in respect of any matter; provided in this case that the Shareholder concerned is

directly or indirectly able to obtain a credit for such taxation in calculating the tax liability in respect of the Distribution (and/or amounts received by or accrued to it from the Dividend Access Trust) in the jurisdiction in which the Dividend Access Trust is established;

38.4.3.6 a *pro rata* share of any taxation which the Subsidiary declaring and paying the same is obliged to withhold or to deduct from the amount of any Dividends declared and/or paid by it to the Associated Company; provided in this case that the Shareholder concerned is directly or indirectly able to obtain a credit for such taxation in calculating the tax liability in respect of the Distribution (and/or amounts received by or accrued to it from the Dividend Access Trust) in the jurisdiction in which the Dividend Access Trust is established;

38.4.3.7 a *pro rata* share of any taxation (i) which the Associated Company is obliged to withhold or to deduct from any amount accrued and/or paid to the relevant Dividend Access Trust or (ii) for which the Associated Company is liable in respect of any Dividend accrued to it and/or which it receives from the Subsidiary; provided in each such case that the Shareholder concerned is directly or indirectly able to obtain a credit for such taxation in calculating the tax liability in respect of the Distribution (and/or amounts received by or accrued to it from the Dividend Access Trust) in the jurisdiction in which the Dividend Access Trust is established; and

38.4.3.8 a *pro rata* share of any taxation which the Associated Company paying any Dividend to the Dividend Access Trust is obliged to pay in respect of that Dividend (being an amount paid in addition to the Dividend); provided in this case that the Shareholder concerned is able to obtain a credit for such taxation in calculating the tax liability in respect of the Distribution (and/or amounts received by or accrued to it from the Dividend Access Trust) in the jurisdiction in which the Dividend Access Trust is established.

39. Notices

39.1 All notices intended or required to be given by the Company to any Shareholder of the Company shall be given in any manner authorised by the Act and the Regulations.

- 39.2 Each Shareholder of the Company:
- 39.2.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and
- 39.2.2 may notify in writing to the Company an email address and/or any other electronic address, which address shall be his address for the purposes of receiving notices by way of electronic communication and if such an address is provided, the Shareholder consents to any notices by the Company being sent to that Shareholder by way of electronic communication and not in hard copy, to the extent permitted in terms of the Act and the Listings Requirements.
- 39.3 Any Shareholder whose address in the Securities Register is an address not within the Republic, and who shall from time to time furnish the Company with an address within the Republic at which notices can be served upon him, shall be entitled to have notices served upon him at such address.
- 39.4 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 39.5 Any notice sent by any means permitted by the Regulations shall be deemed to have been delivered as provided for that method of delivery in the Regulations.
- 39.6 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, prior to his name and address being entered in the Securities Register, was given or deemed to be given to the person from whom he derives his title to such Share.
- 39.7 Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on his heirs, executors or

administrators, and all persons (if any) jointly interested with him in any such Shares.

- 39.8 Notices for Shareholders' meetings must be sent to the JSE at the same time as the notice is given to the Shareholders. Notices for Shareholders' meetings must also be published via the Securities Exchange News Services of the JSE, or any successor service.

40. Amendment of Memorandum of Incorporation

- 40.1 This Memorandum of Incorporation may only be altered or amended in the manner set out in the Act, read together with the Listings Requirements and the FSR Act and, to the extent applicable, any licencing conditions imposed on the Company.
- 40.2 While the Shares of the Company remain listed on the JSE, the Board must, prior to proposing any amendments for approval by the Company's ordinary Shareholders, submit any such proposed amendments to the Memorandum of Incorporation to the JSE for approval in accordance with the Listings Requirements.
- 40.3 If any proposed amendment to the Memorandum of Incorporation relates to the variation of any preferences, rights, limitations and other terms attaching to any other class of Shares already in issue, that amendment may not be implemented without a special resolution of the Shareholders in respect of Shares in that class at a separate meeting. In such instances, the Shareholders in respect of such Shares may also be allowed to vote at the meeting of the ordinary Shareholders, subject to the limitation on the voting rights recorded in clause 8.3 and paragraph 10.5(c) of Schedule 10 of the Listings Requirements. No resolution of Shareholders of the Company to amend the Memorandum of Incorporation which relates to the variation of any preferences, rights, limitations and other terms attaching to a class of Shares shall be proposed or passed, unless the amendment has been approved by a special resolution of the Shareholders of the Shares in that class.
- 40.4 Preferences, rights, limitations or other terms of any class of Shares must not be varied and no resolution may be proposed to the Company's Shareholders for such variation in response to any objectively ascertainable external fact or facts, as provided for in sections 37(6) and (7).

41. Company Rules

The Board may not make, amend or repeal any Rules for the Company as contemplated in sections 15(3) to (5).

42. Branch Register

- 42.1 The Company, or the Board on behalf of the Company, may cause to be kept in any foreign country a branch register or Securities Register of Securities holders resident in such foreign country and the Board may, subject to the provisions of the Act, make and vary such regulations as it may think fit respecting the keeping of any such branch register or Securities Register.
- 42.2 Subject to and to the extent permitted by applicable law and regulation, and to the rules applicable to such a system, the Company may determine that any Securities or class of Securities held on a branch register may be held in uncertificated form in accordance with any system outside the Republic, which enables title to such Securities to be evidenced and transferred without a written instrument, and which is an electronic settlement environment for transactions to be settled and transfer of ownership in Securities to be recorded electronically.
- 42.3 Notwithstanding anything in this Memorandum of Incorporation to the contrary and subject to applicable law and regulation, the Directors, in their discretion, shall be entitled to put into place any mechanism and/or system in any jurisdictions and within or across numerous markets, whether involving third parties or otherwise, in relation to the recording, transfer, custody, clearing and settlement of Shares and/or title and/or interests in respect of same, whether or not in conjunction with or separate of any branch registers in place.

43. The Nedbank Unbundling

- 43.1 In this clause 43, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them in this clause 43.1 and cognate expressions bear corresponding meanings:
- 43.1.1 "**Group**" means the Company including its subsidiaries from time to time;
- 43.1.2 "**Listing Date**" means the date upon which the Company's Ordinary Shares are admitted to listing and trading on the main board of the exchange operated by the JSE;
- 43.1.3 "**Listings Requirements**" means the listings requirements of the JSE (including any rulings made, and dispensation granted, by the JSE to the Company);

- 43.1.4 **"Managed Separation"** means the managed separation of the four largely independent businesses within the Old Mutual plc Group as it existed at 11 March 2016;
- 43.1.5 **"Mandatory Implementation Date"** means the first anniversary of the Listing Date;
- 43.1.6 **"Nedbank"** means Nedbank Group Limited, incorporated and registered in South Africa with registration number 1966/010630/06;
- 43.1.7 **"Nedbank Shares"** means ordinary shares in the issued share capital of Nedbank;
- 43.1.8 **"Nedbank Unbundling"** has the meaning given to this term in clause 43.3 below;
- 43.1.9 **"Old Mutual plc"** means Old Mutual plc, incorporated and registered in England and Wales with registered number 03591559, which shall be reregistered as a private limited company in due course;
- 43.1.10 **"Old Mutual plc Group"** means Old Mutual plc including its subsidiaries and subsidiary undertakings from time to time
- 43.1.11 **"Retained Nedbank Shares"** means such number of Nedbank Shares as constitutes 19.9% of the issued ordinary share capital of Nedbank at the date upon which the Nedbank Unbundling is implemented (in addition to any Nedbank Shares held by the Group for and on behalf of policy-holders, or through mutual funds managed by the Group, from time to time); and
- 43.1.12 **"Unbundled Nedbank Shares"** means all of the Nedbank Shares held by the Group, the distribution of which to the Company's issued ordinary Shareholders will result in the Group, immediately after the implementation of the Nedbank Unbundling, holding only the Retained Nedbank Shares; provided that, notwithstanding anything to the contrary, the number of Nedbank Shares so distributed pursuant to the Nedbank Unbundling shall not be fewer than 149 000 000 Nedbank Shares.
- 43.2 If there is any conflict between this clause 43 and any other provision of this Memorandum of Incorporation, the provisions of this clause 43 shall prevail.

- 43.3 The final step in the Managed Separation entails the Company procuring the unbundling to its ordinary Shareholders of the Unbundled Nedbank Shares in accordance with this clause 43 ("**Nedbank Unbundling**").
- 43.4 The Company shall, subject to (i) all requisite regulatory and corporate consents and approvals required for the implementation of the Nedbank Unbundling having been obtained, (ii) compliance with all conditions imposed on or in respect of the Company by any applicable regulator and (iii) compliance with the Act and the Listings Requirements, be obliged to:
- 43.4.1 procure within the timeframe referred to in clause 43.4.3, to the extent that it is so able, that the relevant companies within the Group which hold Nedbank Shares make the necessary distributions *in specie* of the Unbundled Nedbank Shares such that the Company is able to implement the Nedbank Unbundling and the Group will, following the implementation of the Nedbank Unbundling, hold only the Retained Nedbank Shares;
- 43.4.2 within the timeframe referred to in clause 43.4.3, effect a distribution *in specie* of the Unbundled Nedbank Shares to its ordinary Shareholders at the relevant time in accordance with section 46 of the Act and the Listings Requirements; and
- 43.4.3 procure that the Nedbank Unbundling is implemented in its entirety at such time as the Board determines is appropriate, but no sooner than 3 months following the Listing Date and no later than the Mandatory Implementation Date; provided that if the Board has not implemented the Nedbank Unbundling by the Mandatory Implementation Date, the Board shall be obliged to procure the implementation of the Nedbank Unbundling with effect from that date (or, to the extent applicable, the first reasonably practicable business day thereafter upon which the Group is legally able to do so).
- 43.5 Subject to applicable law and regulation and clause 12 of this Memorandum of Incorporation:
- 43.5.1 if it is necessary or expedient to take any action because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory outside of South Africa that may be applicable to the Nedbank Unbundling; or
- 43.5.2 any other difficulty arises in connection with the Nedbank Unbundling in such territory,

the Company is entitled to take such action or resolve such matter as the Directors in their discretion may deem fit; provided that in taking such action, the Directors shall do so in an orderly manner in respect of the Company's ordinary Shareholders and the Nedbank Shares. In particular, the Company may, as determined by the Directors in their discretion:

- 43.5.3 sell, or procure the sale of the Unbundled Nedbank Shares or fractional entitlements to the Unbundled Nedbank Shares, and:
 - 43.5.3.1 remit all, or part of, such proceeds to ordinary Shareholders; and/or
 - 43.5.3.2 in relation to fractional entitlements to Unbundled Nedbank Shares:
 - 43.5.3.2.1 retain all, or part of, such proceeds for the benefit of the Company; and/or
 - 43.5.3.2.2 donate all, or part of, such proceeds to a charity designated by the Directors in their discretion; or
- 43.5.4 ignore fractional entitlements to the Unbundled Nedbank Shares.

44. Other listings

- 44.1 The Company's Securities or beneficial interests in relation to them may from time to time be listed and trading on securities exchanges and over-the-counter markets (each a "**Regulated Market**") in various jurisdictions. In this regard, notwithstanding anything in this Memorandum of Incorporation to the contrary, the Board shall be entitled to do, or cause to be done, all things necessary or desirable to ensure:
 - 44.1.1 compliance with applicable law and regulation in such jurisdictions, including the listings requirements or rules of the applicable Regulated Market; and
 - 44.1.2 that efficient and effective settlement mechanisms are in place and operating in the jurisdiction of such Regulated Market.
- 44.2 Subject to applicable law and regulation and the provisions of this Memorandum of Incorporation:
 - 44.2.1 if it is necessary, expedient or desirable to take any action because of legal impediments or compliance with the laws or the requirements of any regulatory body of any jurisdiction outside South Africa that may be applicable to the Company or the holder of the Security; or

44.2.2 any other difficulty arises in connection with corporate actions to be undertaken by the Company in such jurisdiction,

the Company shall be entitled to take such action or resolve such matter as the Directors in their discretion may deem fit; provided that in taking such action, the Directors shall do so in an orderly manner.

1. Preference Shares

1.1 Definitions and interpretation

Save to the extent that this clause 1 indicates otherwise, words and expressions defined in the main body of this Memorandum of Incorporation shall have the same meanings in this clause 1. In this clause 1, unless the context indicates otherwise:

- 1.1.1 **“Accumulated Amount”** means an “Accumulated Amount” as contemplated in clause 1.3.5;
- 1.1.2 **“Accrued Preference Dividend”** means all Preference Dividends which are deemed to have accrued in accordance with clause 1.3.3, but which the Company is for any reason not yet obliged to pay;
- 1.1.3 **Actual Redemption Date** means in respect of any Preference Shares that are issued, the date on which such Preference Share is actually redeemed and the Redemption Amount thereof paid in full to the Preference Shareholder, in accordance with clause 1.4;
- 1.1.4 **“Applicable Law”** means the common law or international law or any statute, regulation, by-law or delegated or other legislation or any directives, notices, rulings, standards or instructions (whether binding or not) made or given in terms of any such law or legislation or any solvency, financial soundness or accounting standard, practice or method (including the Income Tax Act No 58 of 1962, the FSR Act or the Insurance Act No 18 of 2017, generally accepted accounting practice, IFRS and the Prudential Standards, directives and guidance notes issued by the Prudential Authority from time to time);
- 1.1.5 **“Authorising Resolution”** means the resolution of the Board which authorises the issue of Preference Shares, which resolution shall determine the Tranche of Preference Shares in which those Preference Shares shall be included and, if that is a new Tranche, shall establish that Tranche by determining:
 - 1.1.5.1 a distinguishing title for that Tranche of Preference Shares;
 - 1.1.5.2 the Issue Price at which all Preference Shares in that Tranche will be issued;
 - 1.1.5.3 the Dividend Rate that will apply to all Preference Shares in that Tranche;
 - 1.1.5.4 the Dividend Payment Date that will apply to all Preference Shares in that Tranche;

- 1.1.5.5 if the Board in its discretion so elects, a Fixed Redemption Date that will apply to all the Preference Shares in that Tranche, provided that the Board shall not have the power or authority to determine a Fixed Redemption Date which is prior to the first Business Day after the third anniversary of the Issue Date of that Tranche; and
- 1.1.5.6 such other terms that will apply to all Preference Shares in that Tranche as the Board may consider to be necessary or desirable in the circumstances;
- 1.1.6 "**Business Day**" means any day, other than a Saturday, Sunday or official public holiday in the Republic;
- 1.1.7 "**Change of Law**" means any introduction, repeal or variation of or any other amendment to or change in interpretation of any aspect of any Applicable Law which affects any Preference Shares or any aspect of the Company's affairs which relates to any Preference Shares (including the manner in which the Company accounts for or is required to treat any Preference Shares for accounting, tax, solvency, financial soundness or insurance law purposes);
- 1.1.8 "**Distribution**" means "**distribution**" as defined in the Act;
- 1.1.9 "**Dividend Payment Date**" means each date on which the Company is scheduled to pay Preference Dividends, as specified in the Authorising Resolution;
- 1.1.10 "**Dividend Period**" means each period which commences on the day after a Dividend Payment Date and which ends on and includes the next Dividend Payment Date provided that:
- 1.1.10.1 the first Dividend Period in respect of any particular Preference Share shall (i) commence on the day after the Issue Date of that Preference Share, and (ii) end on and include the first Dividend Payment Date which occurs after that Issue Date; and
- 1.1.10.2 the last Dividend Period in respect of any particular Preference Share shall (i) commence on the day after the last Dividend Payment Date which occurs prior to the Actual Redemption Date of that Preference Share, and (ii) end on and include the Actual Redemption Date;
- 1.1.11 "**Dividend Rate**" means the rate of which dividends will be deemed to accrue on a Tranche of Preference Shares, as determined by the Board in the applicable Authorising Resolution;

- 1.1.12 “**Fixed Redemption Date**” means, in respect of a Tranche, a date (if any) determined by the Board as the Fixed Redemption Date for that Tranche in the Authorising Resolution, provided that such date may not be a date prior to the first Business Day after the third anniversary of the Issue Date of that Tranche;
- 1.1.13 “**Issue Date**” means, in respect of each Preference Share, the date on which the Company issues that Preference Share to the subscriber;
- 1.1.14 “**Issue Price**” means, in relation to each Preference Share, the amount of the subscription price paid for that Preference Share;
- 1.1.15 “**Preference Dividend**” means a dividend calculated in accordance with clause 1.3.3;
- 1.1.16 “**Preference Shareholder**” means a holder of a Preference Share who is entered as such in the Securities Register of the Company;
- 1.1.17 “**Preference Shares**” means cumulative, non-participating, non-convertible, redeemable, no par value preference shares in the share capital of the Company having the preferences, rights, limitations and other terms set out in this clause 1 and such other rights, if any, as may be expressly conferred upon them elsewhere in this Memorandum of Incorporation or in the Authorising Resolution;
- 1.1.18 “**Prime Rate**” means the publicly quoted basic rate of interest levied by Nedbank Limited from time to time on overdraft, calculated on a 365 (three hundred and sixty five) day year, irrespective of whether the applicable year is a leap year, and proved, prima facie, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any director or manager of Nedbank Limited, whose appointment and authority need not be proved;
- 1.1.19 “**Prudential Authority**” means the Prudential Authority of the South African Reserve Bank;
- 1.1.20 “**Redemption Amount**” means the amount payable by the Company in order to redeem a Preference Share, being:
- 1.1.20.1 the Issue Price; plus
- 1.1.20.2 the Accrued Preference Dividends for the Dividend Period which ends on the Actual Redemption Date of that Preference Share; plus
- 1.1.20.3 any Accumulated Amounts in respect of that Preference Share on its Actual Redemption Date;

- 1.1.21 “**Redemption Date**” means, in relation to any Tranche of Preference Shares, the earlier of:
- 1.1.21.1 any Fixed Redemption Date which is applicable to that Tranche as determined by the Board in the Authorising Resolution which established that Tranche;
 - 1.1.21.2 any Voluntary Redemption Date in respect of that Tranche in terms of a redemption notice given in accordance with clause 1.1.23; and
 - 1.1.21.3 the date of any winding-up of the Company, which shall then be the Redemption Date for all Tranches.
- 1.1.22 “**Tranche**” means all Preference Shares which are determined by an Authorising Resolution/s to fall within a particular Tranche; and
- 1.1.23 “**Voluntary Redemption Date**” means a date stipulated in a written redemption notice given by the Company to all the Preference Shareholders holding a particular Tranche of Preference Shares, which date shall not be less than twenty Business Days after the date of such notice. The Company shall be entitled to give such a redemption notice:
- 1.1.23.1 in the event that no Fixed Redemption Date was determined in the Authorising Resolution which established such Tranche of Preference Shares, at any time that the Board in its discretion resolves to do so; and
 - 1.1.23.2 in the event that a Fixed Redemption Date was determined in the Authorising Resolution which established such Tranche of Preference Shares, if the Board resolves that a Change of Law in relation to that Tranche has occurred or that such a Change of Law is likely to occur.

1.2 **Issue of Preference Shares**

The Board may, in its discretion and by way of an Authorising Resolution, authorise the issue of Preference Shares, provided that:

- 1.2.1 if the approval of the Prudential Authority is required in terms of Applicable Law, the Board shall not permit such issue until such approval has been obtained;
- 1.2.2 if the Act or the Listings Requirements requires the authority of any resolution of shareholders for that issue of Preference Shares, then the Board shall not permit such issue until such authority has been obtained; and
- 1.2.3 prior to the issue of Preference Shares, the provisions of the Authorising Resolution determining the Tranche shall be communicated to the subscribers therefor.

1.3 Preference Dividends

1.3.1 Each Preference Share shall entitle its Preference Shareholder to Preference Dividends in accordance with the provisions of this clause 1.3.

1.3.2 The rights of the Preference Shares to the Preference Dividends shall rank prior to the dividend rights of the Ordinary Shares.

1.3.3 For each Dividend Period, each Preference Share shall be deemed to accrue a Preference Dividend in an amount equal to the aggregate of the amounts calculated in respect of each day during that Dividend Period in accordance with the following formula:

$$a = [(b + c) \times d] \div 365$$

in which formula:

a = the amount for each day during such Dividend Period;

b = the Issue Price of such Preference Share;

c = any Accumulated Amounts in respect of such Preference Share; and

d = the applicable Dividend Rate.

1.3.4 The Company shall pay the Accrued Preference Dividends for each Dividend Period on the first Dividend Payment Date which occurs after such Dividend Period, provided that the Company shall only pay the Preference Dividend after the Board has authorised the payment of that Preference Dividend and the Company has complied with all Applicable Laws (including obtaining any regulatory approvals required, satisfying the solvency and liquidity test in terms of the Act and satisfying all solvency, financial soundness and similar requirements that may be applicable to the Company pursuant to any Applicable Laws).

1.3.5 If any Preference Dividend is not paid in full on the applicable Dividend Payment Date, then the unpaid amount shall be accumulated ("**Accumulated Amount**") until the date on which it is paid or the Redemption Date, whichever is the earlier.

1.3.6 For the avoidance of doubt, it is recorded that the cumulative nature of the Preference Shares means that, although the Company cannot be compelled by the Preference Shareholders to pay Preference Dividends, all Accumulated Amounts are taken into account in the calculation of all subsequent Preference Dividends in terms of clause 1.3.3.

1.4 Redemption

1.4.1 The Company shall redeem all (and not only one or some) of the Preference Shares comprising a particular Tranche of Preference Shares:

1.4.1.1 on the Redemption Date in relation to that Tranche, subject to compliance with all Applicable Laws (including obtaining any regulatory approvals required, satisfying the solvency and liquidity test in terms of the Act and satisfying all solvency, financial soundness and similar requirements that may be applicable to the Company pursuant to any Applicable Laws); and

1.4.1.2 by paying the Redemption Amount in respect of each of such Preference Share to its Preference Shareholder on the Redemption Date, whereupon that Preference Shareholder shall surrender to the Company any share certificates issued in respect of those Preference Shares and such Preference Shares shall be restored to the status of authorised but unissued Preference Shares which do not fall within any Tranche.

1.4.2 If the Company fails to pay to a Preference Shareholder on the Redemption Date any amount which is due to be paid in terms of clause 1.4.1, the unpaid amount shall bear interest at a rate equal to the Prime Rate.

1.4.3 The Company shall not redeem any Preference Shares falling within any Tranche unless it redeems all Preference Shares within that Tranche at the same time.

1.4.4 In the event of any winding-up of the Company, the Company shall be obliged to redeem each Preference Share in accordance with clause 1.4.1.

1.5 Ranking and Participation

1.5.1 Each Preference Share within a Tranche ranks:

1.5.1.1 after the claims of all policyholders and beneficiaries;

1.5.1.2 after any debt instruments issued by the Company;

1.5.1.3 *pari passu* in all respects with all other Preference Shares; and

1.5.1.4 prior to the Ordinary Shares.

1.5.2 Accordingly, the Company shall:

1.5.2.1 during any financial year, not pay any dividend, redemption payment, repurchase price or other Distribution in respect of its Ordinary Shares or other shares ranking after the Preference Shares ("**Other Distribution**") unless, in respect of

all Preference Shares in issue, all Preference Dividends and all Redemption Amounts, due, scheduled or contracted to be paid, have been paid. If, during any financial year, the Company has made payment of all such Preference Dividends and Redemption Amounts, then this clause 1 shall not restrict the payment of any Other Distribution, but, solely for the purposes of applying the solvency and liquidity test to the Other Distribution, the aggregate amount of Preference Dividends and Redemption Amounts that would be payable to the Preference Shareholders if the Company were to be liquidated at the time of the Other Distribution shall (as contemplated in Section 4(2)(c) of the Act) be treated as a liability of the Company; or

- 1.5.2.2 on any winding-up of the Company, not pay any Other Distribution unless all of the Preference Shares have first been redeemed in full in accordance with clause 1.4; or
- 1.5.2.3 when making any payment of Preference Dividends to any Preference Shareholder, simultaneously pay the same amount to all Preference Shareholders, provided that if a Preference Dividend calculated in respect of a Preference Share falling within one Tranche is higher than the Preference Dividend calculated in respect of a Preference Share falling within another Tranche and the Company does not simultaneously pay all such Preference Dividends in full, then the aggregate amount paid by the Company in respect of those Preference Dividends shall be apportioned between those Preference Shareholders so that each such Preference Shareholder receives the same percentage of the Preference Dividend calculated in respect of the Preference Share held by it. The principle contained in the foregoing proviso shall also apply in relation to payments on account of Redemption Amounts if different Tranches with different Issue Prices are redeemable at the same time and the Company does not simultaneously pay all such Redemption Amounts in full.
- 1.5.3 In the event of any failure of the Company to declare and pay any Preference Dividends or Redemption Amounts, the Preference Shareholders cannot compel the declaration or payment thereof or petition for the liquidation of the Company.
- 1.5.4 Save as provided for in clause 1.3 and clause 1.4, the Preference Shares shall not be entitled to any participation in the profits or assets of the Company.

1.6 **General Meetings of the Company and Voting**

1.6.1 Each Preference Shareholder shall be given due notice of, and shall be entitled to be present (either in person or by proxy) at, all general meetings of shareholders of the Company.

1.6.2 The Preference Shareholders shall not be entitled to vote, either in person or by proxy, at any shareholders meeting by virtue of or in respect of the Preference Shares, except:

1.6.2.1 if any Preference Dividend or part thereof (whether declared or not) remains unpaid after the applicable Dividend Payment Date;

1.6.2.2 in respect of a resolution which directly affects any of the rights attached to the Preference Shares or the interests of the Preference Shareholder or purports to amend the preferences, rights, limitations and other terms associated with the Preference Shares; and

1.6.2.3 if any Redemption Amount is unpaid.

1.6.3 At every shareholders meeting or adjourned shareholders meeting of the Company at which a Preference Shareholder is entitled to exercise voting rights:

1.6.3.1 all resolutions put to the meeting shall be voted on by way of a poll; and

1.6.3.2 each Preference Shareholder shall be entitled to exercise one vote in respect of each Preference Share which it holds,

provided that the total voting rights of the Preference Shareholders at such a shareholders meeting or adjourned shareholders meeting may not exceed 24.99% of the total voting rights of all shareholders at such meeting.

1.6.4 At all times while a Preference Shareholder is entitled to exercise voting rights at any shareholders meeting of the Company in accordance with clause 1.6.2, any Preference Shareholder shall be entitled to convene a general meeting of the shareholders of the Company in accordance with section 61 of the Act.

1.7 **Modification of Rights, Amendments and Meetings of Preference Shareholders**

The Company shall not be entitled to:

1.7.1 vary, amend, delete, add to, alter or cancel any of the rights or privileges of the Preference Shareholder or any of the terms or conditions applicable to the Preference Shares;

- 1.7.2 issue any shares which in any way rank in priority to the Preference Shares, whether in relation to dividends, Distributions, rights on winding up, voting rights or otherwise. For the avoidance of doubt, it is recorded that this clause 1.7.2 does not prevent the Company from creating and issuing further Preference Shares, whether of the same Tranche as any issued Preference Shares or of a different Tranche, unless the Company has first obtained:
- 1.7.3 the prior written consent of every Preference Shareholder at the relevant time; or
- 1.7.4 if there is more than 1 (one) Preference Shareholder, the prior sanction of a resolution passed at a separate general meeting of the Preference Shareholders *mutatis mutandis*:
- 1.7.4.1 in accordance with the manner prescribed in the Company's Memorandum of Incorporation for general meetings of shareholders of the Company; and
- 1.7.4.2 in the same manner and with the majority as required by the Act in respect of a special resolution.
- 1.7.5 The preferences, rights, limitations and other terms of the Preference Shares shall not be varied and no resolution may be proposed to shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Act.
- 1.7.6 The provisions of this clause 1.7 are in addition to any requirement for approval in terms of any Applicable Laws.
- 1.7.7 Notwithstanding anything to the contrary herein contained, the provisions of this clause 1 may not be amended (whether by substitution, addition, deletion or otherwise) without the approval of a resolution of the Preference Shareholders which has been adopted in accordance with clause 1.7.4. Any resolution of Ordinary Shareholders or any other class of security holders which purports to amend this clause 1 or creates or authorises the issue of any shares referred to in clause 1.7.2 shall, even if adopted, be of no force or effect unless and until such approval of the Preference Shareholders has been obtained.
- 1.7.8 Any resolution at a meeting of the Preference Shareholders shall be voted upon by way of a poll, and each holder of Preference Shares shall be entitled, in respect of that resolution, to exercise one vote for each Preference Share held.

1.8 Rights on Winding Up

1.8.1 In the event of any winding up of the Company, each Preference Share shall confer on its Preference Shareholder a right to a return of capital in an amount equal to the Redemption Amount of that Preference Share calculated up to the day on which that return of capital is paid.

1.8.2 The Preference Shares' rights to a return of capital shall rank prior to the rights to a return of capital of all other classes of shares in the Company share capital including, but without limitation, the Ordinary Shares.

1.9 General

1.9.1 If any certificate issued in respect of a Preference Share is defaced, lost or destroyed, it shall be replaced by the Company upon receipt by the Company of either the defaced certificate or an affidavit by a manager or other employee, acting in an executive capacity, of the Preference Shareholder to the effect that such certificate has been lost or destroyed together with a written undertaking indemnifying the Company against any direct loss, liability, damage, cost or expense (excluding any indirect consequential loss, liability or damage) which the Company may suffer as a result of issuing such replacement certificate.

1.9.2 The provisions contained in clauses 21 to 28 relating to Securities generally or to Ordinary Shares and the holders of Ordinary Shares and their meetings shall, save as expressly provided otherwise in this clause 1, apply *mutatis mutandis* to the Preference Shares and Preference Shareholders and their meetings.